



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

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MEMORANDUM

SUBJECT: Policy on the Availability of Low-Solvent Technology
Schedules in Clean Air Act Enforcement Actions

FROM: J. Craig Potter
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TO: Regional Administrators
Regions I-X

Your staffs have requested resolution of the issue of when low-solvent technology (LST) schedules can be considered as an available method of compliance in cases brought to abate emissions of volatile organic compounds (VOC). They also asked for guidance on what period of time should be given in a compliance schedule. In response, we have determined the following Agency policy.

Background

In earlier guidance addressing options for VOC control, EPA encouraged the low solvent (reformulation) approach. Though compliance dates in the SIPs were generally December 31, 1982, EPA recognized when the earlier guidance was issued that it could take longer than December 31, 1982 for sources to develop and implement complying coatings. Through surveillance and enforcement activities by the States and EPA in recent years, it became evident that many sources had not made serious efforts to find complying coatings or, in some instances, efforts directed toward complying coatings failed to yield desirable results. Often, sources were not vigorously pursuing the alternative of installing add-on controls. As a result we now face extended non-compliance, increased VOC enforcement activity,

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and a need to issue specific guidance on what is an acceptable schedule for VOC violators where pursuit of LST is being considered. It must be emphasized that more than five years have passed since the VOC regulations were first adopted by the States. With the ozone attainment dates already past in many areas and less than two years away in extension areas, it is critically important to assure compliance in an expeditious manner.

Policy

LST schedules may be used in EPA enforcement actions as long as the following five conditions are met:

1. The schedule must be expeditious. It can provide no more than three-months from the date of filing of the complaint (or equivalent State action in cases where the State is pursuing the enforcement action) for a source to demonstrate compliance using complying coatings.
2. Add-on controls must be part of the schedule with a commitment to implementation should the LST program fail. The add-on control program can extend up to an additional twelve months. It must begin at the end of the three-month (or shorter) LST schedule and have increments of progress encompassing: commencing engineering studies, ordering control equipment, commencing installation of control equipment, completing installation, and demonstrating compliance.
3. Final compliance cannot extend beyond December 1987.
4. Stipulated penalties must be part of the schedule for failure to meet incremental dates of the add-on control program.
5. Civil penalties must be obtained. (This requirement is established by previous policies such as the September 20, 1982 Post-1982 Enforcement Policy and the June 28, 1984 "timely and appropriate" guidance for the air program. These policies are located at Sections V.R. and I.I. respectively in the Clean Air Act Policy Compendium.) Penalties assessed by EPA must be consistent with the September 12, 1984 CAA Stationary Source Civil Penalty Policy, as amended, and penalties assessed by States must be consistent with the June 26, 1984 guidance by the Deputy Administrator entitled "Implementing the State/Federal Partnership in Enforcement: State/Federal Enforcement Agreements." These policies are located at

Sections V.Y. of the Clean Air Act Policy Compendium and Tab GM-41 of the General Enforcement Policy Compendium, respectively.

Schedules resolving State enforcement actions will be evaluated in light of this policy to determine the appropriateness of EPA deferring to the State resolution. A State enforcement resolution should include at least conditions (1), (2), (3) and (5) of those required in EPA actions.

This policy is effective on the date of this memorandum, except for the following limited situation. To allow for a smooth transition, ongoing State settlement negotiations where greater than three-month LST schedules are being considered will be accepted as long as the other elements of this policy for a State enforcement resolution are satisfied. This limited exception will terminate ninety days from the date of this guidance.

This policy is not applicable to schedules issued pursuant to Section 113(d). Approvability of those schedules is dependent upon meeting the requirements of Section 113(d). However, in making a determination of expeditiousness for a DCO, the concepts outlined in conditions (1) and (2) of this guidance should be followed.

If you have any questions on this policy, please call your Regional liaison contact in OAQPS's Stationary Source Compliance Division or OECM's Air Enforcement Division.

cc: Air Division Director, Regions I-X
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